

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
MELISSA LYNN YOCIUS, a/k/a)	Under Chapter 7
MELISSA LYNN RAYMAR)	
)	No. BK 94-50312
)	
Debtor(s).)	
)	
LAURA K. GRANDY, TRUSTEE))	Adv. No. 94-5040
)	
Plaintiff,)	
)	
vs.)	
)	
ALT-WOOD CREDIT UNION,)	
)	
Defendant.))	

OPINION

On April 16, 1993, Melissa Lynn Yocius (hereafter, "debtor") and Steven Yocius entered into a security agreement with Alt-Wood Credit Union (hereafter, "defendant") securing a cash advance of \$3,617.50 with a 1988 Ford Taurus automobile titled in both their names. Debtor then, on April 26, 1994, filed a petition for relief under chapter 7 of the Bankruptcy Code listing defendant as a secured creditor with a lien on the car. Defendant did not, at any time before or after the bankruptcy case was filed, have its lien noted on the certificate of title to the car.¹ As a result, the chapter 7 trustee filed the instant adversary complaint against defendant on June 6, 1994, seeking to avoid the lien under 11 U.S.C. section 544(a)(1). Defendant defends against

¹ The parties have stipulated that the security agreement in question is valid and that defendant's lien is not noted on the certificate of title issued by the state of Illinois.

the complaint

by arguing that the trustee may not avoid its consensual lien pursuant to 11 U.S.C. section 545.

In Illinois, the exclusive method of perfecting a security interest in a motor vehicle is by notation of the lien on the certificate of title to the vehicle in accordance with 625 ILCS 5/3-202. E.g., In re Keidel, 613 F. 2d 172, 173 (7th Cir. 1980). This statute provides, in pertinent part:

(b) A security interest is perfected by the delivery to the Secretary of State of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the required fee. It is perfected as of the time of its creation if the delivery is completed within 21 days thereafter, otherwise as of the time of the delivery.

625 ILCS 5/3-202(b).

Here, defendant admits that the lien is not noted on the certificate of title, and there is nothing before the Court to indicate that the responsibility for failing to perfect the lien rests with anyone other than defendant. The Court can only assume that defendant failed to deliver the requisite documents and fee to the Illinois Secretary of State's office, thus denying itself a perfected security interest in the vehicle.

Since defendant's lien was never perfected, it is clear that the trustee in bankruptcy, armed with her "strong-arm" powers, can defeat defendant's lien. Section 544(a)(1) of the Bankruptcy Code vests the trustee, upon the commencement of the bankruptcy case, with the status

of a hypothetical judicial lien creditor,² and the Illinois Vehicle Code spells out the respective rights of holders of unperfected security interests vis-a-vis the trustee in bankruptcy standing in the shoes of a lienholder. In re Keidel, 613 F. 2d at 173. It provides, with certain exceptions not relevant here, that "a security interest in a vehicle of a type for which a certificate of title is required is not valid against subsequent transferees or lienholders of the vehicle unless perfected as provided in this Act." 625 ILCS 5/3-202(a). This is consistent with section 9-301 of the Illinois version of the Uniform Commercial Code (hereafter, "U.C.C.") which governs the priority of

² 11 U.S.C. section 544(a)(1) provides:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists
. . . .

11 U.S.C. § 544(a)(1).

security interests in vehicles.³ It states, in pertinent part, that "an unperfected security interest is subordinate to the rights of . . . a person who becomes a lien creditor before the security interest is perfected." 810 ILCS 5/9-301(1)(b).⁴ Since the trustee, as of the petition date, assumed the role of a judicial lien creditor "who . . . had completed the legal (or equitable) processes for perfection of a lien upon all the property available for the satisfaction of . . . [her] claim against the debtor," 4 Collier on Bankruptcy ¶ 544.02, at 544-6 (15th ed. 1994) (footnote omitted), her rights in the car are superior to those of defendant as the holder of an unperfected security interest. In re Keidel, 613 F. 2d at 173.

The Court is not persuaded by defendant's argument that In re Zrna, No. 86 A 0767 (Bankr. N.D. Ill. (date of decision unavailable)), requires a different result. In Zrna, a chapter 7 debtor attempted to avoid a creditor's non-perfected security interest in a car under section 545(2) of the Bankruptcy Code.⁵ In denying relief to the

³ Although the means of perfection of security interests in vehicles is exclusively the province of the Illinois Vehicle Code, Article 9 of the U.C.C. controls the priority of security interests in automobiles. E.g., United States v. Rotherham, 836 F. 2d 359, 365 (7th Cir. 1988).

⁴ The trustee in bankruptcy is a "lien creditor" within the meaning of section 9-301(1)(b) as of the date that the bankruptcy petition is filed. 810 ILCS 5/9-301(3).

⁵ Section 545(2) of the Bankruptcy Code provides:

The trustee may avoid the fixing of a
statutory lien on property of the debtor to the
extent that such lien--

. . .

debtor, the Court's discussion centered on the fact that a security interest is a consensual lien, and not a statutory lien, despite the fact that the method of perfection is governed by statutory law. Accordingly, section 545(2), which deals with avoidance of statutory liens, was of no avail to the debtor. In re Zrna, slip op. at 2-3 (citing In re Keidel, 614 F. 2d at 174-75).

Here, the trustee has never contended that defendant has a statutory lien. Rather, as noted above, the trustee proceeds under section 544(a)(1) to avoid what is concededly a consensual lien. As a result, the security interest of defendant is invalid as against the trustee in bankruptcy.

See Order entered this date.

DATED: September 12, 1994

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists

11 U.S.C. § 545(2).